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PROTECTION OF MINORITIES

Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities

Report of the Secretary-General prepared pursuant to Subcommission resolution 1994/4

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Introduction

1. The Subcommission on Prevention of Discrimination and Protection of Minorities, at its forty-sixth session, adopted resolution 1994/4 of 19 August 1994 entitled "Prevention of discrimination and protection of minorities", by which it requested the Secretary-General to invite Governments and competent intergovernmental and non-governmental bodies to submit their comments on the recommendations contained in the final report presented by Mr. Asbjørn Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1993/34/Add.4), and to make the comments available at the forty-seventh session of the Subcommission.

2. In a note verbale dated 12 December 1994, the Secretary-General invited the Governments of all States to submit their comments on the recommendations contained in addendum 4 to the above-mentioned report. Appropriate letters were also sent to competent intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council on the same date.

3. On 15 May 1995, substantive information had been received from the Governments of Angola, Germany, Morocco, Pakistan, Spain and Ukraine.

4. The United Nations Research Institute for Social Development (UNRISD) sent the report of the UNRISD/UNDP international seminar on ethnic diversity and public policies (New York, 17-19 August 1994).* 1/

5. The World Federation of United Nations Associations sent the report of the Fourteenth Regional Conference of European United Nations Associations** on political, economic, social, cultural, humanitarian, religious and linguistic rights of minorities in Europe. 2/

6. Pax Romana, a non-governmental organization, sent information from its group of jurists "Roda Ventura" on the situation of minorities in Barcelona and Catalonia (Spain).

7. The information received, including relevant parts of the aforementioned reports, is analysed in sections I-IV of the present report. Any further information will be submitted in addenda to this report.

I. GENERAL COMMENTS

8. In his address to the Fourteenth Regional Conference of European United Nations Associations, Mr. Boutros Boutros-Ghali, Secretary-General of the United Nations, stated:

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* Hereinafter referred to as the UNRISD/UNDP seminar.

** Hereinafter referred to as the UNA Conference.

> "Today, we must reacquaint ourselves with the exceptional complexity of the problem of national minorities. This complexity stems, first and foremost, from the lack of a real definition of the notion of national minority. 'National minority' can of course be understood to mean a numerically inferior group within the population of a State whose members have their own specific ethnic, religious or linguistic characteristics that distinguish them from the rest of the population. One can also stress the minority's feeling of solidarity and its political will to preserve its culture, traditions, religion or language. Nevertheless, even a definition as approximate as this one raises numerous difficulties in itself ... I would add that implicit in the question of national minorities is the fundamental issue of the divergence between the interests of States and the interests of peoples. In many cases, internal conflicts bring out the contradiction between two cardinal principles of international relations: the sovereignty and territorial integrity of States; and the right of peoples to self-determination."

9. Some of the issues raised at the Conference and the seminar have a direct relevance to those contained in addendum 4 to Mr. Eide's report. In particular, it was pointed out at the seminar that it was important not to let concern about ethnic violence overshadow the positive aspects of ethnic identity. The world benefited from diverse cultures and individuals were enriched by the sense of community that ethnic identification could convey. Thus ethnicity in itself was not a "problem" to be solved; rather, the destructive manifestations of ethnicity caused by particular circumstances were what needed to be addressed.

10. Universal concern at the spread of "minority" problems was expressed at the UNA Conference. In many parts of the world, such problems were endangering society, and in some cases had led to armed conflict. That was directly contrary to the Charter, which called for communities "to practice tolerance and live together in peace with one another as good neighbours", and the United Nations had a major task on its hands to stop the spread of this danger to peace.

11. The debate at the UNA Conference also took note of the close connection between human rights, minority rights and democracy. In that connection, Mr. José Ayala Lasso, High Commissioner for Human Rights, stated the following:

> "Almost all States comprise a number of ethnic groups or religions and are likely to continue to do so. Any change in national societies will be towards greater, and not less, pluralism because of the impact of human rights and democracy. The use of force by ethnic groups to create their own State or quasi-State cannot and must not constitute the solution to the problems of minorities. Human rights set limits on the rights of groups, whether they be majority or minority groups. However, the rights of minorities must not in any circumstances be interpreted in such a way as to destroy the fundamental principles of equality. The State must be the common home of all ethnic, religious and linguistic groups residing in its territory; these groups must enjoy de facto equality and none of their members should be a second-class citizen".

12. The participants at the UNRISD/UNDP seminar also discussed a wide spectrum of policies ranging from constitutional guarantees of human rights to arrangements for devolution and sharing of power; from State investment, expenditure and resource allocation to affirmative action policies; and from assimilation to cultural pluralism especially with regard to language, religion and education. Some of these themes focused on policy approaches that could facilitate ethnic accommodation in diverse societies.

13. It was generally agreed at the seminar that in recent years numerous ethnic, religious and racial conflicts had belied predictions that "development" would dissipate ethnic loyalties or that the end of the Cold War would lead to world peace. The upsurge in ethnically-based conflicts had been caused by a number of factors, including the very ones that were expected to have had the opposite effect. First, with the end of the Cold War, less attention had been given to containing conflict within the spheres of influence of the super-Powers. The post-Cold War rise in ethnic conflict was thus due, in part, to definitional changes, since similar conflicts had previously been interpreted within the Cold War paradigm of bipolar blocks. Second, severe social and economic disruption in much of the world had resulted in widespread poverty, unemployment and insecurity, especially in Africa, Eastern Europe and the former USSR. The failure of many socialist and developing States had led to disillusionment with development policies and ideologies, and a loss of State legitimacy. The comment was made that, in most instances, violent ethnic conflict was the result of the collapse of the State, rather than the cause of the collapse of the State.

14. It was further pointed out that with the decline of the State, there had been a decline in civic-based forms of identity - in the degree to which people belonging to different ethnic groups also saw themselves as members of a civic body with common goals and aspirations. The declining authority of the State had left openings for civil society that had been filled by a wide range of organizations and activities, including ethnically-based movements. Civil society, too, had a role to play in promoting civic identity. Some organizations promoted civic identity and maintained ethnic identity, since those identities could coexist, but others engaged in more intolerant and destructive ethnically-based activities.

15. It was also felt that the rise in ethnic conflict was a phenomenon of post-modernity, a reaction against rational, material culture. Many pointed to the important role of ethnic power brokers, who tried to "outbid" each other in the strength and extremity of their ethnic rhetoric. Some thought of ethnic conflict in terms of cycles of rising and declining tension. At times, tensions might be thought of as going into a period of incubation. At other times, historical changes might lead to the end of one cleavage but the possible emergence of another. Most participants seemed to agree that it was useful to think in terms of a variety of predisposing and triggering factors rather than a single cause of ethnic conflict.

16. In the view of participants, it might be useful to look at conflicts in a given region. Alternatively, there might be common themes across different conflicts, such as the dynamics of post-colonial cases or the particular issues associated with indigenous peoples. Finally, it might be possible to compare stages along a continuum of conflict, from pre-violence through a

cessation of violence. To that end, it would be essential to look at successful cases of ethnic accommodation, in which violence was ended or successfully avoided. When violence occurred, the gulf between the contending parties may be so great that no immediate resolution was possible; in such instances, the best available policy might be containing or limiting the scope of violence until evolving circumstances provided an opportunity for resolution. The recent progress in Northern Ireland provided an example of the potential of such a containment approach.

17. According to information submitted by Governments, they attach great importance to the protection of minorities and share the view expressed in the study that comprehensive measures and regulations to protect the rights of persons belonging to minorities are needed at both the national and international levels. States have adopted legislative and other measures and have concluded multilateral and bilateral treaties to achieve those ends.

II. MEASURES TO BE TAKEN AT THE NATIONAL LEVEL

18. The UNRISD/UNDP seminar, while examining what could be done on a national level to promote ethnic accommodation and prevent ethnic conflict, pointed out that the formulation of public policy was complicated by the fact that the complete resolution of ethnic tensions was a Sisyphean task, a goal that could never be reached. Ethnic relations and ethnicity itself are constantly in flux; there was therefore no single, all-purpose solution to ethnic conflict. In addition, policy options were constrained by a number of factors: the historical circumstances of the country; the need to pursue goals other than ethnic accommodation and the constraints of the democratic framework within which most Governments now operated - all of which could limit the policy options available and the ability of the State to carry them out. For those reasons, the State could often only make changes incrementally.

19. In the opinion of the participants, there were several policy options at the State level that had the potential to alleviate ethnic tension and conflict. They included political, cultural and economic formulas, some of which worked in tandem. It was important to emphasize domestic policies that accommodated ethnic diversity and discouraged the intensification of conflict and the outbreak of violence, rather than concentrating on international policies of intervention after the fact. The international community could have an indirect role to play by disseminating research findings and institutionalizing norms that could influence domestic policy choices - such as respect for minority rights, for instance. Many seminar participants felt, however, that there were important limits to the organizational capabilities and resources of the international community in undertaking more direct intervention or imposing and enforcing measures to end ethnic conflicts.

A. Education, language and culture

20. In the view of participants at the UNRISD/UNDP seminar, education policy had a potentially great impact on the development of a sense of mutual respect and civic identity among young people. In that connection, Northern Ireland's policy initiatives were discussed, including equal funding for Catholic and Protestant schools, as well as non-religious schools and a new course for all students on cultural understanding.

21. Language policy was considered as a related issue. In Mauritius, for example, ancestral language instruction was included in the educational system, reflecting the country's motto, "Unity through diversity". It was also noted that in Senegal, the coexistence of several linguistic groups was facilitated by the recognition of several "national" languages in addition to one "official" one. South Africa, following the dismantling of apartheid, has conceded recognition to 11 official languages. This had happened after centuries of victimization of indigenous languages.

22. At the UNA Conference, the view was expressed that in order for a State to secure the unity of its people, it must adopt one official language. However, that must in no way prevent the members of a minority group within the State from using their own language, in private and in public, with anyone who is prepared to communicate with them in that language.

23. Pax Romana's group of jurists "Roda Ventura" described the situation of children belonging to minorities in Catalonia (Spain). It also elucidated the problems encountered by them and how those problems were being dealt with. In particular, it was pointed out that in 1990 and 1991, approximately 3.8 per cent of children born in Barcelona were children of parents originating from developing countries. The children of immigrant families tended to be concentrated in a small number of schools situated primarily in the city centre (socially the most backward area). Some schools had more than 50 per cent of pupils from ethnic minority groups, while in other schools in more affluent districts the phenomenon of ethnic minorities was unknown. That concentration had some advantages in that it tended to maintain the minority cultures and to act as an incentive to families to send their children to school. However, it also had disadvantages in that it reduced the immigrants' opportunities for integration.

24. One of the problems with the children of members of foreign minorities was the higher level of absenteeism than among the rest of the population. The reasons for that situation were religious (Muslim fasting periods, for example) and cultural in nature. In addition, school attendance by the daughters of members of immigrant minorities was irregular and lower than for boys since, on reaching the age of puberty, they contracted a previously arranged marriage or were kept in the family home.

25. A legal obstacle to school attendance by immigrant children was the difficulty faced by their parents in obtaining a stable job, and this affected the family as a whole. Because of those obstacles, most sons and daughters of members of foreign immigrant minorities attended primary school more or less regularly, but dropped out of school during the next stage - preparation for the school-leaving examination or vocational training; completion of that stage would make it easier for them to enter the labour market.

26. Given that situation, the authorities had adopted educational measures to ensure the social integration of the juvenile members of the minorities. Attention was drawn to the compensatory education programme of the Catalan government's Department of Education and the "education in diversity" programme organized by the Barcelona City Council.

27. The compensatory education programme a programme aimed at integrating students who had specific educational needs according to their ethnic, cultural and socio-economic origin, and at the same time took due account of their differences. Since 1983, educational materials had been prepared with that aim in view. The Department of Education was also cooperating with the Catalan government's Department of Social Welfare in matters relating to compensatory education, since all the school's needs could not be met by teachers alone. Close collaboration had thus been established between teachers and welfare workers, and positive results had been achieved.

28. The education in diversity programme was fundamentally aimed at the education of adults and the promotion of the language of the culture of origin and at the intercultural training of teachers. Under the programme, Arab mothers had been attending classes in the Raval district of Barcelona in order to improve their access to culture and activities outside the home and to ensure greater continuity of school attendance by their children. In addition, a school back-up course was organized to prevent the children of immigrant minorities from being left out of school activities.

B. Civil rights

29. No comments have been received relating to ways and means of promoting and protecting the civil rights of persons belonging to minorities.

C. Economic and social rights

30. The UNRISD/UNDP seminar discussed quite a wide spectrum of economic and social policies which, in the view of participants, had a considerable impact on ethnic relations. The view was expressed in the course of that discussion that countries that were successful in achieving rapid and broad-based growth tended to find it easier to accommodate the material claims and aspirations of various ethnic groups. However, rising prosperity might also intensify ethnic competition or hurt certain groups. On the other hand, policies that contributed to economic stagnation and decline, thus intensifying poverty and insecurity, were likely to exacerbate ethnic tensions and provided fertile ground for the operation of ethnic entrepreneurs. The distribution of resources, in addition to the absolute increase or decrease in prosperity, was a key factor in the rise of discontent. Strategies that increased economic inequalities, especially if they coincided with ethnic divisions, marginalized certain groups and exacerbated ethnic discrimination and tensions.

31. In addition, where ethnic groups traditionally worked in different economic sectors, they were often differently affected by economic policies and particularly by structural adjustment policies. Such policies might therefore aggravate ethnic relations even though they were not intended to have an ethnic impact. Economic policies might also be specifically designed to have different effects on different ethnic groups. Policies of ethnic preference, for instance, had been formulated with the intention of compensating historically or structurally disadvantaged groups.

32. It was also pointed out that the promotion of more equitable life chances for the various groups in society should include policies such as equal access to public housing, to funding for education and to opportunities for employment.

33. In spite of such policies, ethnic hierarchies in many countries were resilient because they were reproduced through societal discrimination. In such cases, policies to measure and promote the economic advancement of specific disadvantaged groups had been implemented. Such policies had proven useful in a number of settings, including the United States and India, but they also had limitations. There was a broad range of such policies, from consideration of race as one positive factor among many in a hiring or college acceptance decision, to a percentage of reserved places in colleges or government jobs. In practice, preferential policies had tended to benefit disproportionately the élite in the targeted ethnic group and they could generate hostility from non-targeted groups, especially in conditions of economic decline. In such situations, it might be preferable to attack the roots of the problem through policies - such as universal literacy, consistently good primary education, access to health care and expanding training and employment opportunities - for all groups.

34. Finally, and more generally, it was suggested that the State should use more resources for social spending than military spending. The assumption was that human development was the great social integrator. In keeping with the theme of moving away from a preoccupation with military security and towards human security more broadly defined, the recommendation entailed investing more in people to achieve ethnic and human security. Several of the links between political, cultural and economic approaches emerged from the discussions. On a more general note, economic advancement might be facilitated by a group's gaining some political voice in government and discrimination in the economic sphere may be weakened by a growth in mutual respect due to national recognition of various cultural practices. Clearly, Governments needed to include all three policy spheres in their plans, remaining aware that the policies they chose had interrelated effects.

35. In the view of one participant at the UNA Conference, minorities should also be made to feel that they were treated as equal citizens in economic terms, that they had equal opportunities in advancing and enjoying as good a standard of living as the members of the dominant ethnic group. In many cases this meant that the State had to adopt discriminatory policies which were aimed at improving the standards of living of certain minorities by providing special facilities and services to enable them to set up a business, have access to finance, etc. In other words, to provide full economic rights. Positive discrimination had to be adopted for a number of minorities and that had been the case in many European countries. However, positive discrimination should not be permitted to continue if and when the minority reached a standard which was comparable to that of the major ethnic group.

36. Pax Romana's group of jurists considered that the employment of members of the immigrant minorities originating from poorer countries was one of the areas causing the most problems. In the view of the group, the legal uncertainty surrounding the granting of work and residence permits and the great mobility of labour (precariousness of employment contracts) were the two

factors which characterized the labour situation of those minorities. Nevertheless, practical reforms of labour legislation were being carried out in Spain, dismissal and recruitment were being liberalized, and the situation was being left to the harsh laws of the marketplace. Consequently, the labour situation of large sectors of the majority Spanish population was also suffering from the increasingly precarious labour situation.

D. Effective political participation

37. In Pakistan, seats for minorities have been reserved both in the Federal and provincial legislatures, in larger proportion than that of their population. The Government has appointed judges in the senior courts from among the minorities. It has also created a full-fledged ministry (the Minority Affairs Division) to look after the welfare of the minorities and to tackle issues concerning them. The Human Rights Cell was created within the Government of Pakistan, inter alia with a view to monitoring and resolving the issues of human rights violations committed against the minorities.

38. The Government of Ukraine considers to be controversial the recommendations contained in the report calling upon States and minorities to explore the following options: (i) elected bodies and assemblies ("parliaments") of national or ethnic, religious and linguistic minorities; (ii) establishment of consultative, legislative and executive bodies chosen through free and periodic elections; (iii) special measures to ensure minority representation in the legislature.

39. In the view of the Government, it is impracticable to implement these recommendations, under the circumstances, since there are 130 national minorities in Ukraine. On the other hand, in accordance with relevant legislation, citizens of Ukraine who are members of national minorities have the right to be elected on an equal footing to any position in the legislative, executive or judicial branches, in local or regional government. In addition, in accordance with the Law of Ukraine on National Minorities, the Council of Representatives of National and Cultural Societies was established at the Ukrainian Ministry for National, Migratory and Religious Affairs. Similar councils were created in the provinces. Those bodies provide national minorities with the possibility of exercising their right to cultural autonomy.

40. Participants at the UNRISD/UNDP seminar argued that electoral formulas were relatively easy to negotiate and to amend, and that more attention needed to be paid to designing a more representative system. In that regard, the report of the seminar states as follows:

> "A wide variety of democratic electoral systems can facilitate ethnic accommodation in diverse settings. The choice of an electoral system affects ethnic dynamics along several dimensions. First, some electoral systems might make it possible for previously politically excluded minorities to achieve representation in a legislative body, perhaps through a proportional representation system. The system in Mauritius, for example, in which seats are granted to 'best losers', is a way to help smaller groups gain representation. A second desirable outcome, which does not always go hand-in-hand with the first, is for electoral

formulas to produce representatives that command the effective support for their community, rather than those that are co-opted members of smaller groups - in other words, for groups to achieve genuine voice or influence in political processes."

41. In the view of the participants, electoral systems should also be designed to create incentives for cooperation and moderation among ethnic groups. Some preferential voting systems offered incentives to cooperate: the necessity of competing for another ethnic group's second choice vote discouraged inflammatory ethnic appeals during elections. Geographical distribution requirements for votes might also encourage more broad-based appeals. Finally, electoral systems should, if possible, avoid entrenching ethnic identities, as in separate electorates; minorities should be allowed to cast votes along ethnic lines in one election and in another choose to vote along other lines. Cumulative voting schemes showed great promise in that regard. Balancing those goals was tricky and electoral systems performed differently in different situations. Nevertheless, this was one of the more easily manipulable political formulas, especially in times of political transition. At the very least, policy makers should be aware that universal suffrage was not enough and that there was much diversity among democratic electoral systems; this could have profound implications for the nature of politics in an ethnically diverse country.

42. Federalism was mentioned as another type of formula for ethnic accommodation. Where geographically feasible, a possible federal formula was ethnic territorial autonomy and a multi-ethnic centre. Such a compromise could avoid open conflict and satisfy groups that would otherwise exit from the political process. Federalism not only gave groups a degree of control over territory - often an important consideration - but might also provide a framework for a degree of cultural autonomy, such as control over the schools in a region. For large and culturally complex counties, such as India, federalism might be essential. Even where communal groups were not territorially segmented, as in Malaysia or the United States, the possibility of voice was increased by the many places it could find expression. Moreover, the diffusion of ethnic interaction in the political sphere over many arenas averted the kind of polarization possible if there was only a single, zero-sum struggle for power at the centre. Disadvantages of federalism included the potential for ethnic tensions between States or provinces; discrimination against migrants from other regions, such as "sons of the soil" movements; and the fixed nature of federal boundaries, which compartmentalized a fluid social structure. There might also be self-determination or separation demands by federated units.

43. During the deliberations at the UNA Conference, it was pointed out that mature modern democracies must take into account social pluralism and, therefore, seek a participatory, consensual, and communal character. In such a system, majority rule was mitigated by the minority groups' right of access to public decision-making, a coalition structure of government, over-representation of minorities within State institutions, veto powers to protect vital minority and other group interests, and a spirit of compromise. Absolute democracy might oppress minority groups in pluralistic societies. A non-monolithic conception of the people was a precondition for the enjoyment of fair opportunities by minority groups in this conception of government.

44. In the view of one participant, a "federal right" of minorities or a right to political autonomy was not to be found and would be hard to realize in international law or in State constitutional systems. But federalism and decentralization of decision-making power to autonomous units certainly facilitated the possibility for people belonging to minorities to identify with State institutions, to adequately express their will, and to shape their way of life. Autonomy regimes which might have a territorial or individual basis allowed the people themselves to influence those matters which concerned them most directly.

E. Constitutional arrangements

45. According to replies received, the protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities is guaranteed by the Constitutions of Angola, Germany, Morocco, Pakistan, Spain and Ukraine. For example, the Constitution of Pakistan ensures that minorities are adequately represented in the legislature of the country. The protection of the rights of persons belonging to minorities and their right to free development in the spiritual sphere are guaranteed by the Constitution, the Law of Ukraine on National Minorities and by other legislative acts. All Ukrainian citizens are entitled to equal protection of the law.

46. The Government of Spain pointed out that in recent years there has been an increase in racially motivated conflicts. As a consequence, in view of the heightened sensitivity of the Government and society in this regard, and notwithstanding the fact that Spanish legislation on this subject was already extremely advanced, a number of steps are being taken in a variety of fields to curb these conflicts. The principal evidence of that concern is to be found in the draft of the new Penal Code currently before Parliament, which introduces new types of offences and provides for more severe penalties.

47. In its report, the UNRISD/UNDP seminar discussed policy approaches that could facilitate ethnic accommodation in diverse societies. It considered constitutional approaches as one of the most obvious responses to ethnic diversity.

48. With reference to this issue, one participant at the UNA Conference stated as follows:

> "State constitutions are to be based, above all, on human rights. These fundamental freedoms are at the centre of 'civil society' and delimit, on the one hand, a private, impermeable personal sphere; on the other hand, they also enable individuals to create, individually and jointly, a 'public space' and to define and realize common values. Constitutional protection of human rights can be supported by international guarantees and pluralist character of society, and State constitutional orders often fail to adequately recognize the legitimate aspirations of their heterogeneous populations. ...
>
> "Within a sound constitutional regime ethnic differences should be subordinated to common political values. State Constitutions should be

conceived as expressions of the political will and basic consensus of all citizens. They must not be allowed to degenerate into instruments designed merely to realize the political aims of dominant elites.

"Ethno-nationalism in its inclusive sense (forced assimilation) as well as its exclusive sense (arbitrary restrictions on citizenship, deportation, etc.) is incompatible with the basic ideals of citizenship and constitutionalism."

F. Duties to society

49. Referring to paragraph 20 of the Eide report, the Government of Morocco stated:

"It should be noted that the Special Rapporteur refers to article 8, paragraph 4, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which states 'Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States'. It is particularly important that this principle should be adhered to since several multi-ethnic States are currently experiencing a period of unrest due to the intensification of intercommunal conflicts on their territory, conflicts which are, as never before, posing serious threats to numerous regions of the world."

50. The legal order of Ukraine requires that citizens of Ukraine of all nationalities observe the Constitution, comply with the law, protect the sovereignty and territorial integrity of the State, respect the language, culture, traditions, customs and distinctive religions of the Ukrainian people and of all national minorities. At the same time, the State may require citizens to refrain from any activity which is contradictory to the purposes and principles of the State, which represent the manifestation of national intolerance or xenophobia and which is directed against the sovereignty and territorial integrity of Ukraine.

51. At the UNA Conference, reference was also made to the link between rights and obligations, above all, to respect the laws of the State of residence. It was noted that failure to accept those obligations was a common cause of conflict in various parts of Europe.

G. Recourse and conciliation machinery

52. The Government of Spain stated that it had recently prepared its thirteenth periodic report for the United Nations on the elimination of racial discrimination, setting out in detail the problems which existed in the country in connection with the issue. That report provided information, including detailed statistics, on the gypsy population as well as on groups of emigrants; on conflicts which had arisen with them; and on measures taken to eliminate all forms of discrimination not only at the State level but also in collaboration with the autonomous communities and with many non-governmental

organizations concerned with the issue. At the same time, it had not failed to take into account the crucial role of the Defender of the People in this sphere.

53. Pax Romana's group of jurists stressed the importance of preventing ethnic conflicts and of social integration through the mass media. In that respect, it sent a number of comments and recommendations. It noted that in Catalonia, there had been a very promising initiative in that connection, which might serve as a precedent for international purposes: the signing, on 15 February 1995, by the Catalan government, the Catalan Journalists' Association and the media (newspapers, radio and television stations), within the framework of the United Nations Year for Tolerance, of an Agreement on the Protection of the Culture and Image of Ethnic Minorities in the Mass Media. In accordance with the Agreement, the media would undertake to (i) encourage and promote the values of respect for the individual, tolerance, coexistence, peace, democracy and solidarity within legality; (ii) disseminate the benefits of education for the ethnic minorities; (iii) prevent the dissemination of images or messages liable to prejudice the social esteem in which the ethnic minorities are held, in all its forms and senses. This is a very important preventive measure, since the social equilibrium entailed in the esteem of the minorities is very fragile. The government of Catalonia undertakes to (i) initiate studies on the importance of the media in forming social attitudes and awareness; (ii) promote or initiate education campaigns in support of the previously established principles; (iii) publish and disseminate information on the minorities and their cultures for the benefit of the majority population.

54. For this reason, in the view of the group of jurists the example described constituted a precedent which might serve as a catalyst for a recommendation by the Commission on Human Rights and should accordingly appear in section II of the Eide report under the heading "Recourse and conciliation machineries". The group also considered that missing from this section was a reference to the obligation of States to take preventive measures to protect the coexistence of the social communities based on their territory. As UNESCO had stated, cooperation by the media was an essential aspect of the preservation of social coexistence and tolerance. Obviously, that type of measure would not solve all the problems, but it would create a new social awareness of the coexistence of majority and minority communities.

55. The group proposed that in the final report to be submitted to the Subcommission at its forty-seventh session, express reference should be made to that type of initiative and that the Subcommission should accordingly decide to submit to the Commission a draft recommendation on the question in the following terms:

> "States shall be obliged to pursue a preventive policy in the mass media which, while respecting freedom of information and expression:
>
> (a) Promotes the values of dignity, peace, tolerance, solidarity and human coexistence between all the social communities existing in their territory;

(b) Promotes the undertaking by the media to encourage constant practical respect for those values in a specific agreement between the social players directly concerned."

III. MEASURES TO BE TAKEN AT THE INTERNATIONAL LEVEL

A. At the bilateral level

56. The Government of Germany stated that protection of minorities had also been expanded through bilateral treaties. In this connection the Federal Government welcomed the recommendation that bilateral treaties should be based on multilateral texts such as the Copenhagen Document of the Conference on Security and Cooperation in Europe (now the Organization for Security and Cooperation Europe). That approach was also chosen in bilateral treaties which flowed into the Pact on Stability in Europe, adopted by all OSCE participating States in March 1995.

57. Ukraine considers that, by ensuring the rights of national minorities on its territory, the Ukrainian State has every right to request an appropriate level of protection of the rights of Ukrainians living in other States, in the first instance in the Russian Federation, Kazakhstan and the Baltic States.

B. Regional and subregional action

58. The Governments of Germany and Spain pointed out that protection for national minorities in Europe had been developed, particularly within the framework of the Council of Europe. In that respect, they drew attention to the text of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on 10 November 1994. Spain had recently signed that Convention.

59. In the view of the Government of Germany, the framework Convention provides the legal bases for the effective protection of the culture and identity of the national minorities living in many countries of Europe. It prohibits any discrimination against a person on the grounds of belonging to a national minority and forbids the assimilation of persons belonging to national minorities against their will. In addition, the Convention, which is also open to States which are not members of the Council of Europe, contains an obligation on States to protect the human rights and fundamental freedoms enshrined in the European Convention on Human Rights which are of particular significance for persons belonging to national minorities.

60. The Government considers that by adopting the framework Convention the international community has succeeded for the first time in formulating specific, legally binding principles for the protection of national minorities. It will be an important instrument for the maintenance of peace, stability and security in Europe. It also points out that on the basis of the decision of the Vienna summit of 9 October 1993, the Council of Europe is working on a draft protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.

C. United Nations human rights bodies

61. At the UNRISD/UNDP seminar, it was noted with appreciation that the United Nations was making strenuous efforts to improve its capacity to protect minorities, but at the same time disappointment was expressed at the poor response of many Governments to various conventions and other instruments in whose adoption their representatives had participated. Many seminar participants also felt that there were important limits to the organizational capabilities and resources of the international community in undertaking more direct intervention or imposing and enforcing measures to end ethnic conflicts.

62. It was suggested that the United Nations should pay more attention to the ethnic aspects of human rights violations, since two thirds of human rights violations involved ethnicity. International conventions on human rights, although very difficult to enforce formally, were increasingly able to influence the behaviour of actors in conflicts.

63. In the view of one participant, because the effectiveness of norms was difficult to measure, it was easy to be pessimistic about the potential impact of normative order in the face of violence. Thus, the possibility of norms "with teeth" was brought up. For example, the participant commented on the possibility of a tribunal with the power to punish crimes against humanity as a deterrent to ethnic violence; experiments of this nature in the cases of Bosnia and Herzegovina and Rwanda should be examined.

64. In his statement at the UNA Conference, the High Commissioner for Human Rights drew attention to the following activity that he had performed with respect to the promotion and protection of the rights of persons belonging to minorities:

> "The dialogue which I have entered into with States gives a better insight into the problems and provides a means of seeking joint solutions and using technical cooperation and assistance, at the request of the States, to help them to establish or strengthen national institutions responsible for promoting and protecting human rights.
>
> During my recent visits to the Baltic countries - Lithuania, Latvia and Estonia, I had occasion to discuss the problems relating to the rights of minorities at the highest level. I also met representatives of national minorities and non-governmental organizations. This dialogue is aimed at promoting the ratification of the principal human rights instruments, and the adoption and implementation of national action plans in the area of human rights, which are formulated with a global and integrated focus and are implemented in cooperation with all the active forces in society, the United Nations specialized agencies and programmes, the regional intergovernmental organizations and non-governmental organizations. The High Commissioner is responsible for coordination of the human rights promotion activities undertaken by the United Nations system. I am also endeavouring to strength cooperation and collaboration between the regional organizations and the United Nations".

65. With reference to the role of United Nations organs and bodies, the High Commissioner stated the following:

> "In situations where there is no declared conflict, there are several mechanisms and institutions that can play a preventive role by seeking constructive solutions. The bodies set up under the United Nations international conventions relating to human rights all have in this respect an important role to play, which could in fact be strengthened in accordance with the spirit of the 1992 Declaration.
>
> The system of reporting by States in accordance with all these conventions can play an important role, thanks to a constructive dialogue between the committees and the States. The members of these committees should seek not only to appreciate the legal situation in these countries, but also to understand the nature of current or possible conflicts, notably those arising from tensions between population groups. They should also do their utmost to suggest means of resolving those tensions. Through the reports submitted to them for consideration, the members of these bodies acquire a knowledge of national situations which can serve as an alarm system."

D. Non-governmental organizations

66. The UNRISD/UNDP seminar considered the role of international non-governmental organizations in the constructive solution of problems involving minorities. In particular, the view was expressed that international NGOs could be particularly well suited to deal with situations of ethnic conflict. For example, although not totally disinterested, they could often play the role of neutral third party to a degree that States could not. In spite of and in part because of their unique position as non-state actors, international NGOs must be aware of the sensitive nature of their interventions overseas. NGO representatives at the seminar emphasized the crucial nature of an incremental approach to NGO intervention. One participant noted the potential of an NGO approach starting with limited cease-fires, for example, since such positive interaction could increase the combatants' trust in each other and the NGO. Also very important was the international NGO's accountability to the local population. In many cases, international NGOs' linkages to local areas gave them insights that foreign Governments that were intervening would do well to heed. NGOs had at times proven able to encourage warring parties to accept incremental steps towards conflict resolution, including acceptance of the principle of third-party mediation.

67. Much attention was devoted to the role of UNAs at the UNA Conference. It was pointed out that they should remain in close contact with their Governments and, where appropriate, international organizations, with the principal intention of ensuring the ratification and application of international standards and the creation of bodies designed to protect minority rights. In addition, it was emphasized that UNAs should take all possible steps to promote education for international understanding, not only in schools and higher education, but also by the use of television, radio, newspapers, and any other media addressed to people of all ages.

68. The participants were also convinced that the World Federation of United Nations Associations (WFUNA) and UNAs must contribute to the efforts at the international and national levels designed to achieve positive results in regard to the protection of minorities, including certain groups - such as migrant workers, refugees, asylum seekers and aliens in general - that may or may not be covered by United Nations instruments.

IV. CONCLUSION AND RECOMMENDATIONS

69. Participants at both the UNRISD/UNDP seminar and the UNA Conference made some general observations, conclusions and recommendations which could be considered as relevant to possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities. In particular, it was stated at the seminar that future security in the world would require a shift of focus from a narrow notion of State security towards concern for human security, by bringing issues such as poverty, unemployment and environmental degradation into the realm of security concerns. The upsurge in ethnic conflict was proof that security defined narrowly in national or military terms could be ineffective, or even counter-productive, without a long-term global commitment to promoting human security.

70. Many participants stressed that it was not conflict itself that was the problem, but rather the lack of means other than violence to resolve conflict. If ethnic tensions were simply viewed as a problem to be repressed, they would not be recognized as a symptom of underlying problems, such as inequitable distribution or social discrimination. It was noted that integration did not mean suppressing tensions, but rather finding mechanisms to overcome them. It was essential to provide conditions that encouraged all groups in society to feel a shared interest in the society as a whole - to support, in other words, the creation of a sense of civic identity. This was an identity that could not be forced onto people, but one that they must adopt themselves. And they were most likely to do so when they felt that their society respected and met their common needs, including their need for ethnic identity.

71. In the view of one participant, at the UNA Conference, it was crucial to begin from the premise that, within an optimal world order, territorial integrity of States was to be preserved and protected. Secessionist movements rarely improved real world situations and should be strongly discouraged in all but the most extreme of circumstances. Intervention and outside action by third States, especially by so-called "mother countries" (i.e. dominant States within the same national group) which tended to impair the integrity of States were not compatible with basic principles of international law and sound principles of good-neighbourliness. As a general rule, solutions to minority problems had to be found within the framework of existing States. Legitimate claims by individuals and groups should normally be accommodated within the State constitutional system by creating adequate political arrangements, structures and procedures. Thus, the starting point of a model world order was that there was no generally recognized right of secession, that State borders were not to be altered except with the consent of the parties concerned, and that weight should not be put on external self-determination. Instead, the focus must be on the creation and pragmatic development of flexible forms of internal self-determination which gave all social groups - majorities and minorities, ethnic and other groups - a fair chance of

political autonomy and other forms of self-realization. Ethno-nationalism in its expansionist form as well as outside intervention or agitation by co-national countries (or from the territories of such countries) was not compatible with the principle aim of the international community: stability in international relations.

72. The UNA Conference concluded as follows:

> "Criteria for self-determination - stability and integrity of States versus rights of independence or secession - should be explored more fully by Governments (through relevant United Nation bodies), academic institutions and NGOs. Autonomy and the feasibility of introducing federal structures where appropriate should be further explored by Governments as means of decentralizing power in order to secure good intercommunal relations within society."

73. Pax Romana's group of jurists stated that it attached importance to paragraphs 14, 15 and 16 of the recommendations contained in document E/CN.4/Sub.2/1993/34/Add.4 and, in particular, the pressing need for States to orient their specific policies towards the lessening of the differences with regard to the enjoyment of civil, political, economic, social and cultural rights existing between the majority social communities and the ethnic, cultural and linguistic minorities (which were usually also economic minorities). In addition, the final document should contain an express appeal, with a time limit, to States to transmit to the Centre for Human Rights reliable and official statistical information on the situation of minorities in their territory and, in particular, on their enjoyment of civil, political, economic, social and cultural rights.

74. The group considered that resolutions adopted on the question by United Nations bodies should also impose an obligation on States to transmit to the Centre for Human Rights all existing information on legislative measures, regulations and judicial protection measures which they had implemented or instituted since 1993 in order to protect the rights of minorities and their effective enjoyment.

Notes

1/ United Nations Research Institute for Social Development (UNRISD), Ethnic Violence, Conflict Resolution and Cultural Pluralism. Report of the UNRISD/UNDP International Seminar on Ethnic Diversity and Public Policies (New York, 17-19 August 1994), UNRISD, Geneva, February 1995.

2/ World Federation of United Nations Associations, Minorities in Europe: Political, Economic, Social, Cultural, Humanitarian, Religious and Linguistic Rights. Report of the Fourteenth Regional Conference of European United Nations Associations (Geneva, Palais des Nations, 7-9 November 1994).